

Florida Steel Corporation and United Steelworkers of America, AFL-CIO. Case 12-CA-6871

July 30, 1982

**SECOND SUPPLEMENTAL DECISION
AND ORDER**

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On August 20, 1979, the National Labor Relations Board issued its Supplemental Decision and Order in this proceeding¹ in which the Board, *inter alia*, granted certain additional remedies which the Administrative Law Judge had refused to provide. Thereafter, both Respondent and the Charging Party Union petitioned the United States Court of Appeals for the District of Columbia for review of the Board's Order, and the General Counsel filed a cross-application for enforcement of the Order. On February 25, 1981, the court remanded the case to the Board for further consideration and clarification of the remedy granted therein.²

On April 22, 1981, the Board accepted the court's remand and notified the parties that they could file statements of position with regard to the issues raised by the remand. Subsequently, the General Counsel, Respondent, and the Union filed statements of position. In addition, Respondent filed a request for leave to file a response to the Union's statement of position, and an attached response. The Union also moved that the Board take judicial notice of the June 15, 1981, decision of the Court of Appeals for the Fifth Circuit in *Florida Steel Corporation v. N.L.R.B.*, 648 F.2d 233 (as amended on denial of rehearing July 28, 1981).

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire case in light of the court's decision, the statements of position on remand, the response brief and the motion, and we now enter the following findings.³

**I. THE PREVIOUS BOARD ORDER AND THE
COURT'S REMAND**

In its Supplemental Decision and Order, the Board granted extraordinary remedies in this case for reasons explained therein.⁴ The Board found

that Respondent had violated Section 8(a)(5) and (1) of the Act by unilaterally changing the pay rates of two employees in the bargaining unit represented by the Union at Indiantown, Florida, without first notifying and bargaining with the Union about the issue. Based on the rationale explained in a previous decision involving this Respondent,⁵ the Board concluded that the usual cease-and-desist and affirmative remedial order would not adequately remedy the violations. The Board stated that Respondent's "pattern of unlawful conduct" in preceding years had evidenced a "rejection of the principles of collective bargaining," of which its most recent violation was but a continuation.⁶ Thus, the Board provided for the issuance of a corporatwide cease-and-desist order; corporatwide posting of the notice; the mailing and reading of the notice to all of Respondent's employees; and publication of the notice in all appropriate publications. In addition, the Board ordered Respondent to permit the Union access to any of Respondent's plants if, within 2 years of the Order, a Board-conducted election was held at the plant, or if Respondent gave a speech concerning union representation to employees convened for such a purpose. As noted above, these remedies were deemed warranted because of Respondent's pattern of attempting to defeat union representation at all costs by a sustained campaign of varied and repeated unfair labor practices at organized and unorganized plants alike.⁷

Only the propriety of the Board's remedial Order was at issue before the reviewing court. Respondent contended to the court that the Board's Order was inappropriately broad, especially the union access requirements. The Union argued that, in light of Florida Steel's earlier violations, the Board's remedy insufficiently protected employee rights under the Act and should have included additional remedies.

The court determined that it was faced with the difficult issue of determining the scope of the Board's remedial authority as balanced against an employer's right to deny a union access to its property. The court considered whether the principles of *N.L.R.B. v. The Babcock & Wilcox Company*,

infra. The case was remanded to the Administrative Law Judge for further hearing and a decision as to whether Respondent had violated the Act in certain other respects. The Administrative Law Judge concluded that Respondent had not further violated the Act, and the Board adopted that conclusion.

⁵ 242 NLRB 1333 (1979).

⁶ See 244 NLRB at 395; 242 NLRB at 1333-34.

⁷ For a detailed description of Respondent's unlawful conduct, see *Florida Steel Corporation*, 242 NLRB at 1333-34, and cases cited therein. See also *United Steelworkers of America v. N.L.R.B.*, *supra*, 646 F.2d at 621-624, and cases cited therein at 621, fn. 9; *Florida Steel Corporation v. N.L.R.B.*, *supra*, 648 F.2d at 237.

¹ 244 NLRB 395.

² *United Steelworkers of America [Florida Steel Corporation] v. N.L.R.B.*, 646 F.2d 616.

³ We have permitted Respondent to file its response and have fully considered it here. We also grant the Union's motion.

⁴ In an earlier decision in this proceeding, *Florida Steel Corporation*, 235 NLRB 1010 (1979), the Board reversed the Administrative Law Judge and found that Respondent had violated the Act as discussed,

351 U.S. 105 (1956), affected the Board's remedial grant of access to a union on a corporatewide basis at unorganized plants. In so doing, the court distinguished between access for organizational purposes and access as a remedy to deter employer interference with employee rights under the Act. In the former situation, the court held, private property rights need not be sacrificed as long as employee rights can be exercised through other means. As to the latter circumstances, however, the court stated that:

[A]ccess may be imposed as a remedial measure without a finding that the union will be unable to reach the employees through other available channels of communication. Instead, the critical inquiry is whether the employer conduct is of such a nature that access is needed to offset harmful effects that have been produced by that conduct. If union access is needed to dissipate those effects, access may be granted even though the union has alternative means of communicating with employees. 646 F.2d at 638.

The court further decided that union access may be awarded as a remedial measure at locations other than those where the employer engaged in its unlawful conduct if such conduct produces a coercive effect at those other plants. Such access would also be permitted where unlawful conduct at an organized plant chills employee rights at an unorganized plant.⁸ However, the court concluded that the Board was required to substantiate its conclusion that access was necessary to offset the consequences of unlawful employer conduct. Turning to the instant proceeding, the court determined that the Board's analysis had been insufficient to justify the remedial grant of access. The court stated:

Given the amount at stake in this setting, however, a conclusory statement by the Board that access is needed to neutralize effects is not sufficient to justify a grant of access. Assumptions must be supported by evidence in the record. The seriousness of the violations at issue must be weighed. Where access is awarded beyond the locations at which unfair labor practices are found, the extent to which employees located in other plants know, or have reason to know, of unlawful conduct must be considered. The distance between the employer's operations may be relevant. The presence or absence of union activity at various company locations is an important factor that should be considered. In the case of a recidivist violator,

the effect of the passage of time between violations must be evaluated. In short, we hold that the Board must find that the employees at those plants where access is imposed have suffered coercive effects from the employer's unlawful conduct and that an access remedy is necessary to cure those effects. 646 F.2d at 639.

The court remanded the case to the Board to consider the remedy previously granted in light of the court's decision. It reasoned that the Board had not had the benefit of its guidelines and that upon remand the Board might determine that different remedies should be ordered to offset the effects of Respondent's unlawful conduct. We have accepted the court's decision as the law of the case. Therefore, we now turn to a consideration of the facts in light of the standard of analysis set forth by the court.

II. THE REMEDY

A. *The Positions of the Parties*

Subsequent to the reviewing court's opinion, the General Counsel, the Union, and Respondent submitted statements of position. The Union and the General Counsel still seek here certain corporatewide remedies previously ordered by the Board, including a corporatewide cease-and-desist order, and companywide posting, mailing, reading, and publication of the Board's notice. However, the Union now limits its request for access to Respondent's Tampa and Jacksonville, Florida, facilities, rather than to all of Respondent's facilities. Because of this new, limited request, the General Counsel, while maintaining that the Board's original remedial Order was appropriate, no longer argues for corporatewide access. Respondent asserts that a conventional cease-and-desist order is the proper remedy. For the reasons that follow, we believe that union access to the Tampa and Jacksonville facilities is appropriate.⁹ In all other respects, we adopt our previous Order.¹⁰

B. *The Appropriateness of the Remedy*

As noted above, the court propounded guidelines for the Board to follow in determining whether access to facilities other than the one at which Respondent committed the unfair labor practice is warranted. These guidelines, which we follow as the law of the case, are considered below.

⁹ Accordingly, we do not reach the issue of whether corporatewide access would have been an appropriate remedy.

¹⁰ Both Respondent and the Union oppose remanding this case for a new hearing. We agree with both parties that further hearings are neither warranted nor desirable at this stage of the proceeding.

⁸ 646 F.2d at 638. In this regard, the court noted its disagreement with a contrary holding by the Court of Appeals for the Fifth Circuit. See *Florida Steel Corp. v. N.L.R.B.*, 620 F.2d 79 (5th Cir. 1980).

1. The seriousness of the violations at issue

Respondent violated the Act by failing to fulfill its statutory obligation to bargain with the Union concerning changes in the pay rate of two employees recalled from layoff in the bargaining unit, at Indiantown, Florida, represented by the Union. Certainly, the bypassing of a collective-bargaining representative by an employer is not a *de minimis* violation of the Act. Indeed, Respondent does not dispute that it violated the Act. The Board has previously stated, however, that the 8(a)(5) violation involved here "would not, under ordinary circumstances, appear to justify extraordinary remedies. . . ."¹¹ This violation, however, must be evaluated in the context of Respondent's earlier conduct, which we now examine.

The Union was certified in May 1974 to represent the production and maintenance employees at Respondent's Indiantown facility. Because of this exercise of Section 7 rights by the employees, Respondent refused to institute a new quarterly wage review policy or to grant wage increases to Indiantown employees. Respondent also denied employees there an increase for call-in pay and an increase in Respondent's tuition refund plan. These 8(a)(1) and (3) violations occurred in the last quarter of 1974.¹² Layoffs at the Indiantown plant were effectuated in January 1975,¹³ and the 8(a)(5) and (1) violation involved here took place in April 1975, a scant few months after Respondent's first discriminatory conduct. The form of these unlawful actions was similar to the prior conduct. They both involved the pay rates of employees represented by the Union.

Further, as the reviewing court here noted, Respondent has previously attempted to undercut the Union's standing as the exclusive bargaining agent by refusing to bargain at two other plants, where the Union was certified, in violation of Section 8(a)(5) and (1).¹⁴ Furthermore, at each of the four plants where the Union conducted an organizational campaign, Respondent withheld companywide benefits, in the manner described *supra*. The withholding of the benefits at Respondent's Croft (Charlotte), North Carolina, plant was widely publicized at the Indiantown facility in an attempt to discourage employees at the latter facility from selecting the Union.¹⁵ Thus, it is clear that employ-

ees working at the Indiantown facility have been subjected to repeated and varied unfair labor practices over the course of a relatively short period of time. And these unfair labor practices were designed to discourage employees from voting for the Union, to penalize them for selecting the Union as their representative, and then to undercut the Union's status as exclusive representative. In these circumstances, the violation here, although minor in scope, looms much more serious than it would were it standing alone.¹⁶

2. Extent of knowledge at other facilities

The evidence in cases involving this Respondent convinces us that employees in other plants know, or have reason to know, of Florida Steel's unlawful conduct. The reviewing court made particular note in its disposition of this proceeding that there had been no evidence before it that Respondent had ever publicized its unlawful conduct either corporatewide or at any plant at which there had not been union activity.¹⁷ Recent developments, however, demonstrate the extent to which Respondent's unfair labor practices have been disseminated to employees at all plants, including those at Tampa and Jacksonville.

We note first, as did the court, that Respondent itself on at least two occasions used statutory violations committed at one plant as a warning to employees at another plant. As already discussed above, the withholding of benefits at Respondent's Croft plant was publicized at the Indiantown plant.¹⁸ In addition, employees at the Tampa facility, where the Union requests access in the instant case, also received information calculated to discourage organizational attempts at that location. In August 1974, Respondent had warned its Tampa employees: "Why gamble with your wages and benefits. Don't get caught in the union trap. Wait, watch, and see what happens in Indiantown . . . and in Charlotte." Employees at Tampa were also told "Don't go down the Charlotte road."¹⁹ In 1974, Tampa employees saw Respondent deny benefits to Indiantown employees because they had selected the Union as their representative. In 1975, Respondent unilaterally changed working conditions and discriminated against employees by adopting disparate reimbursement policies at its Croft plant. Respondent's conduct, detailed above,

¹¹ 244 NLRB at 395. The court of appeals characterized Respondent's conduct as "a relatively minor violation of the Act, committed, however, by an employer apparently dedicated to defeating the Union at all costs."

¹² 220 NLRB 1201 (1975), *enfd.* 538 F.2d 324 (4th Cir. 1976).

¹³ These layoffs were never alleged as unfair labor practices.

¹⁴ See 646 F.2d at 622; 231 NLRB 923 (1977); 235 NLRB 941 (1978).

¹⁵ See 220 NLRB at 266.

¹⁶ We are sensitive to the court's admonition regarding the invocation of a history of past violations as justification for extraordinary remedies. 646 F.2d at 639, *fn.* 45. We believe the above analysis carefully takes into account the criteria articulated by the court in its decision, and the concern expressed therein.

¹⁷ 646 F.2d at 641.

¹⁸ 220 NLRB 260, 266.

¹⁹ 231 NLRB 923, 926.

which Tampa employees were specifically invited to observe, violated the Act. During this timespan, in April 1975, Respondent committed the instant violation at the Indiantown facility which Tampa employees had also been admonished to watch.

Additional evidence of employee knowledge concerning Respondent's unlawful conduct was detailed in a recent opinion by the Court of Appeals for the Fifth Circuit. *Florida Steel Corporation v. N.L.R.B.*, 648 F.2d 233 (1981). In that case, the court agreed with a Special Master's finding that two aspects of a videotape shown by Respondent to employees violated Section 8(a)(1) of the Act. Therefore, the court concluded that Respondent was in civil contempt for violating three previous orders issued by the Fifth Circuit.²⁰ The facts of that case are particularly pertinent to the issue of knowledge and the scope of access, if any, to be granted as a remedy in this case.

In 1976, following an organizational campaign at Respondent's Tampa facility, Respondent decided to produce a videotape of its campaign material to prevent employees from signing union authorization cards. Florida Steel's public relations manager hired an independent advertising and public relations firm that had previously done antiunion campaign work for Respondent. Respondent's vice president for industrial relations approved the videotape, and he distributed it to Florida Steel plants with directions that it be shown to all current and new employees. The only employees excluded from the showing were those represented by the Union at Indiantown and at Croft, and those workers at the Tampa plant who had already viewed the antiunion material upon which the videotape was based.

As discussed above, several of the messages displayed to employees were found to have violated the Act, and the Company was declared to have acted in contempt of court decrees enforcing Board orders that Respondent not threaten its employees. One of these messages, although referring to events which occurred from 1970 to 1972, informed employees that the Company could not grant wage increases without negotiating with "the Union." However, as the court stated, four circuit courts of appeals had already determined that Respondent could not withhold periodic wage increases based on its annual surveys. Respondent thus drove home to almost every one of its employees its own previous unlawful conduct, and it threatened to do more of the same. Also in the videotape presentation, Respondent specifically al-

luded to the situation of the employees at Indiantown. The court affirmed the Special Master's conclusion that Respondent threatened employees that they could suffer adverse consequences with respect to their employment if they signed a union attendance roster or a union card. Thus, employees throughout Respondent's facilities, including those at Jacksonville and Tampa, had particular reason to be interested in and have knowledge of, events which happened at Indiantown, the plant involved in the instant proceeding.

The unlawful portions of Respondent's videotape concerning wage and benefit practices were not excised until December 1978. The segment on misuse of employee signatures remained in the videotape.²¹ The inference is clear that Respondent's contumacious conduct extended throughout 1978 and, indeed, beyond that time. Respondent's policy was nothing less than to show the film "to all current employees and those hired in the future."²²

Thus, we cannot accept Respondent's argument that its employees did not know, or had no reason to know, of the Indiantown violations because employees at Indiantown were not told of them and Respondent did not mention it elsewhere in its publications. Respondent's own actions insured that employees throughout its system would focus on events at Indiantown. Indeed, employees at Jacksonville, at Tampa, and elsewhere have been advised by Respondent to take account of the fate of Indiantown employees. We think it reasonable to presume that knowledge of the unfair labor practices would be communicated to, or learned by, employees. Further, Respondent's own actions give rise to the assumption that they have had a chilling effect on employees companywide.

3. The distance between operations

In addition to its Indiantown plant, Respondent operates Florida facilities at Tampa, Jacksonville, Miami, Fort Meyers, and Orlando. These plants are all within 300 miles of Indiantown, and the Tampa and Jacksonville plants are located approximately 230 and 300 miles from Indiantown, respectively. The Company also has facilities in Charlotte (Croft) and Raleigh, North Carolina; Atlanta, Georgia; Aiken, South Carolina; and New Orleans, Louisiana. Organizational activity has occurred at the Croft plant, and at Tampa, Jacksonville, and Indiantown. Although it appears, as Respondent argues, that Indiantown is a relatively isolated location in Florida, we cannot agree with its assertion that Florida Steel employees located elsewhere are

²⁰ 221 NLRB 371 (1975), *enfd.* 534 F.2d 1405 (5th Cir. 1976); 227 NLRB 955 (1976), *enfd.* 536 F.2d 1385 (5th Cir. 1976); 224 NLRB 587 (1976), *enfd.* 552 F.2d 368 (5th Cir. 1977).

²¹ See 648 F.2d at 239-240.

²² *Id.* at 236.

likely to be unaware of violations committed at Indiantown. For the relevant history reveals, as developed above, that Respondent has specifically directed its employees' attention to events at Indiantown. This happened with respect to the Tampa employees in 1977,²³ and with respect to all employees, except those represented by the Union at Croft and Indiantown, as described in the recent Fifth Circuit contempt proceedings.

4. Existence of union activity and the passage of time between violations

As noted, organizational activity has been undertaken by the Union at four of Respondent's locations: Croft, Indiantown, Tampa, and Jacksonville. At each plant, Respondent waged a "tough, prolonged campaign" against the Union, which included the commission of numerous unfair labor practices at each facility.²⁴ Respondent avers that there has been no significant union activity at unorganized plants since the 1976 election at its Tampa facility. Based on this fact, Respondent asserts that union access to employees at unorganized plants is unwarranted because the Union has no special interest in the employees and since such access would have no additional remedial effect for a violation occurring in 1975 at Indiantown. Respondent further argues that no charges of unfair labor practices have been sustained against it since 1976, and that this "improved record and the remoteness of the Company's past violations" indicates that any coercive or chilling effect on employees has been dissipated. This is especially so, according to Respondent, because of the remedial measures already ordered by the Board.

The General Counsel asserts that there was no passage of time between the violation at Indiantown and other of Respondent's violations. The General Counsel argues that the instant violation, which occurred in 1975, was committed during the "prime law breaking years" for Respondent—1974, 1975, and 1976. Both the General Counsel and the Union direct attention to Respondent's contumacious behavior as found by the Fifth Circuit as a further indication of Respondent's unlawful conduct during the period under consideration. In addition, the Union contends that organizational activity at Tampa and Jacksonville was the special focus of Respondent's concern. It notes that Tampa and Jacksonville employees have been subjected, among other things, to coercive interrogation, surveillance, discharge, and the withholding of wages

and benefits.²⁵ According to the Union, these facts, coupled with those previously articulated *supra*, support the need of union access to Tampa and Jacksonville to remedy Respondent's unlawful conduct. We agree.

Respondent's arguments concerning the lack of union activity and its own lack of unlawful conduct strike a hollow note when played against the overwhelming evidence of its continual unlawful responses to union activity. We are mindful of the court's admonition that "history alone cannot justify" corporatewide access unless "it is reasonably foreseeable that the employees at . . . other locations have suffered coercive effects from the employer's conduct and that an access remedy is necessary to cure those effects."²⁶ We note, however, that the lapse of time between when the violation under consideration here was committed and the current date is in large part a function of the legal process. Respondent availed itself of the time after it had committed the violation here to continue to disseminate by videotape its unlawful messages to virtually all of its employees. Furthermore, the Company's unfair labor practice here came at a time when it was committing various other unfair labor practices. In such circumstances, we presume that such an unfair labor practice will have a greater impact than it otherwise might have had, and that its effect will linger beyond the time it normally would. Employees at Tampa, who were instructed to observe events at Indiantown, as well as employees at Jacksonville, could not help but be impressed with Respondent's antiunion attitude and unlawful conduct. Such employees will surely remember, if this Union or another were to undertake an organizational campaign, Respondent's previous unlawful course of conduct. Indeed, all of Respondent's employees are on notice of Respondent's commitment to flouting this nation's labor laws, as attested to by the recent Fifth Circuit contempt proceeding.

Moreover, the mere passage of time does not inure to Respondent's benefit. Respondent is, of course, free to campaign against unionism. However, it has committed itself to coercive means to reach that end. We refuse to infer, as Respondent would have us do, that the recent lack of unfair

²³ See 231 NLRB 923, 926.

²⁴ See cases referred to *supra* at fn. 7. See also *Steelworkers, supra*, 646 F.2d at 622.

²⁵ See *Florida Steel Corporation*, 215 NLRB 97 (1974) (Tampa), *enfd.* in part 529 F.2d 1225 (5th Cir. 1976), supplemented 234 NLRB 1089 (1977), *enfd.* 586 F.2d 840 (5th Cir. 1978); *Florida Steel Corporation*, 220 NLRB 225 (1975) (Tampa), *enfd.* in part 544 F.2d 896 (5th Cir. 1977); *Florida Steel Corporation*, 221 NLRB 371 (1975) (Tampa), *enfd.* 534 F.2d 1405 (5th Cir. 1976); *Florida Steel Corporation*, 224 NLRB 45 (1976) (Tampa); *Florida Steel Corporation*, 224 NLRB 587 (1976) (Tampa), *enfd.* 552 F.2d 368 (5th Cir. 1977); *Florida Steel Corporation*, 222 NLRB 955 (1975) (Jacksonville), *enfd.* 536 F.2d 1385 (5th Cir. 1976); *Florida Steel Corporation*, 223 NLRB 174 (1976) (Jacksonville).

²⁶ 646 F.2d at 641.

labor practices committed by it indicates an "improved record" by this recidivist. It is more reasonable to conclude, given Respondent's continual pattern of unlawful behavior, that Respondent's unlawful conduct has eviscerated its employees' full exercise of Section 7 rights so as to make Respondent's unlawful conduct unnecessary over the last few years. This pattern teaches that if the Union were to begin anew organizational activity at any plant, the Company would respond as it has in the past. Indeed, Respondent's contumacious conduct is proof of its disregard not only of the orders of this Board, but those of the courts as well. Despite its corporatewide posting and mailing of notices to remedy past violations, Respondent has repeatedly engaged in like or related conduct. In so describing Respondent's past conduct, we are not elevating it to paramount consideration in deciding the appropriate remedy here. Rather, we are drawing inferences which we believe are reasonable in light of this Respondent's propensity to engage in unlawful conduct, in order to assess properly the corporatewide effect of Respondent's conduct and the need to remedy that conduct on a corporatewide basis. We are not seeking to punish Respondent merely to deter future violations. We are of the opinion, however, that it is reasonably foreseeable that employees working for Respondent have suffered coercive effects because of Respondent's misconduct, and the history surrounding such misconduct is relevant in ascertaining such effects and the appropriate remedy.

C. Summary: The Appropriate Remedy

The court itself stated that the Board is "clearly entitled, in shaping its remedial order in this case, to consider the extensive record of past unlawful activity of Florida Steel." 646 F.2d at 640. As can be observed from the above, Respondent has continually sought to use its unlawful conduct at one plant to vitiate the rights of employees at another. Respondent cannot now profess that its conduct has had no effect on its employees. We agree with the argument that the Board must provide broad remedies to assure Respondent's employees that their Section 7 rights, long the subject of attack, will be protected. Specifically, we again note that Respondent recently has been found in contempt of court by committing unfair labor practices at almost all of its plants. Further, Respondent has concentrated antiunion efforts wherever and whenever the Union has attempted to organize employees, including those at Tampa and Jacksonville. The harmful effects of such violations are plain.

For the reasons stated in this opinion, we believe that certain companywide remedies are necessary

to effectuate the policies of the Act. Corporatewide mailing, posting, and publication of the Board's notice will be ordered. Respondent officials will also be ordered to read the notice to a gathering of its employees. These remedies will assure, in a manner commensurate with Respondent's own far-reaching tactics, that employees will have the fullest opportunity to hear from Respondent that their Section 7 rights will be protected. Furthermore, we shall also provide for access by the Union limited to Respondent's Tampa and Jacksonville facilities. As the Union has cogently argued, the employees at these facilities have borne the brunt of Respondent's unfair labor practices. The access ordered here is not burdensome. It requires Respondent to relinquish some time and space to the Union so that information may be imparted and employee apprehension of retaliation be dissipated.²⁷ Such remedies restore the parties to the *status quo ante*, and ensure that the rights of employees will be protected.²⁸

Accordingly, we reaffirm our previous order in this case, except that the access ordered will be limited to the Tampa and Jacksonville facilities.²⁹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Florida Steel Corporation, Indiantown, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally changing the pay rates of employees within the bargaining unit represented by United Steelworkers of America at Indiantown, Florida, without first notifying and consulting with United Steelworkers of America.

(b) In any other manner refusing or failing to bargain with the Union or interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under the Act.

²⁷ We are sensitive to the court's concern that advantages are granted to the Union which competing unions, if any, are not given. However, as we have stated in the past, we need not consider such hypotheticals at this time. *Florida Steel Corporation*, 242 NLRB at 1334, fn. 11.

²⁸ We recognize that in the recent Fifth Circuit contempt case, the court did not provide, *inter alia*, corporatewide mailing, reading, or access. In this regard, we note that the reviewing court here has stated that it differs from the Fifth Circuit on the question of union access. 646 F.2d at 638; compare *Florida Steel Corporation v. N.L.R.B.*, 620 F.2d 79 (5th Cir. 1980). Moreover, the Board, although not the court, believed such remedies were necessary to effectuate the purposes of the Act, because of Respondent's contumacious behavior. That such remedies were not granted in that case does not mean they are not warranted here.

²⁹ As it did previously before both the Board and the court, the Union argues that certain additional remedies are necessary here. The Union specifically requests bulletin-board privileges, and a list of names and addresses of employees at Tampa and Jacksonville. While the Board has granted such remedies before, see *John Singer, Inc.*, 197 NLRB 88 (1972), we do not believe they are necessary here.

2. Take the following affirmative action:

(a) Make whole A. F. McCammon and B. W. McDonald for losses resulting from unilateral changes in their pay rates upon their recall in 1975.

(b) Mail a copy of the attached notice marked "Appendix"³⁰ to each and every employee throughout its corporate facilities, post copies at each of its corporate facilities, and include it in appropriate company publications. Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Convene during working time all employees at each of its plants throughout its corporate facilities, either by shifts or departments, or otherwise, and have a responsible official of Respondent, at department supervisor level or above, read to the assembled employees the contents of the attached appendix.

(d) If, within the next 2 years following entry of this Order, the Board schedules an election in which the Union is a participant at Respondent's Tampa or Jacksonville, Florida, plant, then, upon request by the Union, afford at least two representatives reasonable access to Respondent's said plant or plants to deliver a 30-minute speech to employees on working time, the date thereof to be within 10 working days before but not within 48 hours prior to any such election.

³⁰ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) In the event that during a period of 2 years following entry of this Order, any supervisor or agent of Respondent convenes any group of employees at Respondent's Tampa or Jacksonville, Florida, plant and addresses them on the question of union representation, give the Union reasonable notice thereof and afford two union representatives a reasonable opportunity to be present at such speech, and, upon request of said representatives, permit one of them to address the employees for the same amount of time as Respondent's address.

(f) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT change the pay rates of employees in the bargaining unit represented by United Steelworkers of America, AFL-CIO, without first notifying and consulting with the Union.

WE WILL NOT in any other manner refuse to bargain with the Union or interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under the Act.

WE WILL make whole A. F. McCammon and B. W. McDonald for losses in the unilateral changes in their pay rates upon their recall in 1975.

WE WILL send to all our employees copies of this notice; **WE WILL** read this notice to all our employees; and **WE WILL** grant the Union, as ordered, speaking opportunities at our plants in Tampa and Jacksonville, Florida.

FLORIDA STEEL CORPORATION